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HEWLETT PACKARD COMPANY
P O BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

EXAMINER
LEVINE, ADAM L

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JERRY.SHORMA@HP.COM
mkraft@hp.com
ipa.mail@hp.com

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/683,985
Filing Date: October 10, 2003
Appellant(s): GULER ET AL.

_____
Joseph G. Swan
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 19, 2008, appealing from the Office action mailed August 20, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellants' statement of the status of amendments after final rejection contained in the brief is correct. Appellants did not specify that the entry of the after final amendment and the accompanying remarks overcame the rejection of claims 25 and 31 under 35 U.S.C. §112, second paragraph.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellants' statement of the grounds of rejection to be reviewed on appeal is

correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, Official

Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

| 20020099643 | Abeshouse | 7-2002 |
| 20050055299 | Chambers | 3-2005 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that
form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –
(b) the invention was patented or described in a printed publication in this or a foreign country or in public
use or on sale in this country, more than one year prior to the date of application for patent in the United
States.

**Claims 11,14,16, and 23-36 are rejected under 35 U.S.C. 102(b) as being
anticipated by Abeshouse (Paper # 20070319; US Pub. No. 2002/0099643).**
Abeshouse teaches all the limitations of claims 11,14,16, and 23-36. For
example, Abeshouse discloses a system and computer readable medium for allowing
the user to create an online auction, conduct an auction, accept bids from participants,
and determine rules for providing or withholding information regarding the auction from
the bidders (see at least abstract, figs.2,5,9). Abeshouse further discloses:

- <u>allowing selection of a feedback rule</u>: for an online auction contemporaneously
  with an end-user initiating the online auction, wherein the feedback rule

comprises at least one of the group consisting of personalized feedback, conditional feedback, and timing of feedback (see at least figs.5-16; page 7 ¶¶0080-0083, page 10 ¶0101, page 20 ¶0172); selecting feedback rules by the end-user from a pre-determined set of feedback rules (see at least page 7 ¶¶0080-0083, page 8 ¶0089, page 10 ¶0101, page 20 ¶¶0172-0174); customizing feedback rules by the end-user after the online auction has begun, changing previously customized feedback rules by the end-user after the auction has begun, allowing the end user to change selection of feedback rules for the online auction during the online auction, dynamically customizing feedback during the auction, dynamically customizing timing of feedback (see at least figs. 5-16, page 7 ¶¶0080-0083, page 10 ¶0101, and page 20 ¶0172); customizing feedback rules by the auction program based on the auction rules entered by the end-user (see at least figs.2,5,9-10, page 7 ¶¶0080-0083, page 8 ¶0089, page 10 ¶0101, page 20 ¶¶0172-0174); comparing the auction rules entered by the end-user to previously stored auction rules to ascertain similarities and selecting feedback rules by the auction program for the online auction based on similarities of the auction rules for the online auction with the previously stored auction rules, comparing an auction type entered by the end-user to previously stored auction types, selecting feedback rules by the auction program based on the feedback rules used for previously stored auction types, selecting the feedback rule by the instructions based on auction details provided by the end-user initiating the online auction (see at least abstract, figs.2,4; page 4 ¶0059, page 5 ¶¶0068-0069, page 6 ¶0073, page 7 ¶0083, page 13 ¶0128. Please note: in addition, it is examiner's position that this feature would not distinguish because many auction types include feedback rules as part of the standard auction format).

- <u>storing the customized feedback rules</u>: for future use by the auction program (see at least abstract, page 4 ¶¶0056,0059,0062; page 5 ¶¶0064,0070. Please note: this feature is inherent in any computerized system as the rules must be stored in memory in some form in order to be put into use.);

- <u>conducting the online auction by the auction program</u>: using the feedback rules (see at least abstract, figs.1-16, page 1 ¶0004, page 2 ¶¶0023,0026); selecting an event tracked by the online auction, wherein occurrence of the event triggers a change of feedback rules during the online auction (see at least abstract, page 7 ¶¶0080-0083. Please note: the bidder meeting a condition is an example of an event tracked by the auction warranting a change of rules, i.e., allowing the bidder to receive feedback data).

- <u>a computer readable medium</u>: containing instructions that are executable by a computer system (see at least abstract, page 3 ¶0031).

- <u>feedback rule is one of the group consisting of</u>: anonymous feedback, personalized feedback, conditional feedback, timing of feedback, periodic feedback, continuous feedback, a combination of leading bids and rank among leading bids, and a combination of leading bids and whether among leading bids, further allowing the end-user to select at least one feedback rule from the group: no feedback, full disclosure, leading bids, rank among leading bids, whether

among leading bids, a combination of leading bids and rank among leading bids, and a combination of leading bids and whether among leading bids (see at least see at least figs.5-16; page 7 ¶¶0080-0083, page 10 ¶0101, page 20 ¶0172. Please note: regarding claims 20 and 21, at least anonymous, personalized, and conditional feedback are disclosed in addition to others).

- a processor: a network interface coupled to said processor, an auction program operable to provide data to client computers over the network interface for generation of an auction interface (see at least abstract, figs.1,3-4,6-8,11-16; page 2 ¶¶0026-0027, page 3 ¶¶0031,0041; pages 3-4 ¶¶0054-0059).

- an interface: (see at least figs. 6-8,11-16, page 18 ¶0165).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 12-13 and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abeshouse (Paper # 20070319; US Pub. No. 2002/0099643) in view of Chambers (US Pub. No. 2005/0055299).

Abeshouse teaches all of the above as noted under the 35 USC §102 rejection. Abeshouse teaches a) customizing feedback rules, b) selecting feedback rules, c) various feedback rules and variations thereof, d) an end-user operating together with an auction system, or coordinator, and potentially the end-user and auction coordinator being one and the same (see at least page 1 ¶0010), and e) the end-user and auction system or coordinator together formulating details of an auction, including various rules. Abeshouse however does not explicitly disclose the permitting an end-user of an online auction to customize feedback of the online auction by selecting a feedback rule (independently of other auction details). Chambers teaches a) customizing feedback rules, b) selecting feedback rules, c) various feedback rules and variations thereof, d) an end-user operating together with an auction system, and d) the end-user and auction system together formulating details of an auction, including various rules, and also teaches permitting an end-user of an online auction to customize feedback of the online auction by selecting a feedback rule (see at least abstract, figs.5-6, page 6 ¶0080, page 7 ¶¶0084,0087; pages 7-8 ¶¶0095-0096). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to include in the invention of Abeshouse the explicit disclosure of permitting an end-user of an online auction to customize feedback of the online auction by selecting a feedback rule, as taught by Chambers, in order to facilitate end-user control over the auction toward obtaining the best price, thereby encouraging greater use of the invention in commerce.

(10) Response to Argument

Rejection Under 35 U.S.C. §102(b)

<u>Claims 11, 12, 14, and 16</u>

Appellants' remarks are directed only at independent claim 11. It should be noted that claim 12 was rejected under 35 U.S.C. §103(a), as accurately noted in appellants' "Grounds of Rejection to be Reviewed on Appeal." Its inclusion here is understood to indicate that claim 12 is not separately argued and therefore will stand or fall with claim 11, as do claims 14 and 16.

The relevant portion of claim 11 states, "a method comprising allowing selection of a feedback rule for an online auction contemporaneously with an end-user initiating the online auction..." Examiner notes that <u>this claim does not state that the end-user selects the rule</u>, but merely claims a method that allows selection of those rules to occur contemporaneously with the end-user's initiation of the auction. The rules can be selected in any way and by any entity, including automatically based on predetermined conditions. This is taught by the cited portions of the prior art. While the examiner believes this limitation is taught by the portions of the prior art cited in appellants' remarks, the examiner also notes that appellants did not address several sections of the prior art that were also cited by the examiner in explaining this rejection. These other portions include at least page 8 paragraph 0089, and page 20 paragraphs 0173-0174.

With regard to appellants' remarks characterizing the prior art as providing feedback types that are "hard-coded" or "hard-wired" into the system, the examiner does not believe this is an accurate characterization, although it is subject to interpretation. The prior art discloses dynamically modifying feedback rules and altering them based on details entered by the user in setting up the auction. Regardless of whether the appellants characterization of the prior art is accurate, however, the examiner believes this characterization by the appellants is inconsistent with appellants other contention that the prior art does not disclose feedback that can be selected through a computer program. In fact the present claim describes feedback rules that are similarly predetermined, and are selected contemporaneously with the auction.

Appellants argue that the claim "often can enable an end-user to flexibly and dynamically define feedback rules," and they argue that "independent claim 11 clearly recites the above referenced feature." They even refer to examiner's previous indication that the feature is not recited in the claim, yet have not endeavored to amend the claim to include the feature. The feature is still not recited in the claim and the rejection should therefore be sustained.

Claims 23 and 24

Appellants' remarks are directed only at claim 23. As indicated, the claim is drawn to a computer system that includes means for executing programs and instructions coupled to means for communicating data to network-attached computer systems. "Instructions of an auction program" is not claimed as being embodied on a

computer readable medium, and because this claim is drawn to a system comprising various means, this element is understood as elaborating upon the intended functional capability of the various claimed means. "Operable to execute instructions of an auction program" is therefore understood as merely elaborating upon the potential function of the means. The further elaboration upon the function of the auction program is also therefore understood as elaborating upon the potential function of the means. As explained in the 'Response to Arguments' of the immediately preceding final office action, any prior art means that are potentially useable or 'operable' for the same purposes therefore anticipate the claim.

Appellants' argument is directed solely at the function of the program. These functions are disclosed in the prior art as discussed above and below with regard to other claims. With regard to the interface, appellant admits that the prior art discloses various interfaces and thus that the means for communicating operable to generate those interfaces must by necessity be present in the prior art. The selection by the user of feedback from a pre-defined list of feedback rules is disclosed in Chambers with regard to claims 12-13 and 17-21. Apparently with regard to claim 23 it is appellants' contention that the communicating means operable to generate these interfaces would not have the capacity to generate the interface that permits this one feature and would somehow cease to function upon the attempt to create this particular interface. No evidence or reasonable argument is presented in support of this contention. A common sense reading of the prior art as understood by a person of ordinary skill in the art would know that "the means for communicating operable to generate an auction interface"

would continue to function in providing all associated interfaces without the explicit
description of each. The examiner believes that the specific selecting function of this
particular interface, while disclosed in the cited prior art and discussed with regard to
other claims, does not need to be explicitly disclosed with regard to anticipation of claim
23 because claim 23 is merely directed to a means for communicating that is operable
to generate an interface.

     With regard to appellants' argument concerning disclosure of interfaces in the
prior art, it is noted that some portions of the prior art referred to by appellants as having
been cited by the examiner in making the rejection are not completely accurate. They
appear to be the same passages referred to with regard to the above arguments
concerning claim 11 and may have been inadvertently transposed in this section. Other
portions of the prior art cited by the examiner and not addressed by the appellants
include the abstract, figures 1,3-4,6-8, and 11-16; page 2 paragraphs 0026-0027, and
page 3 paragraphs 0031, and 0041, and page 4 paragraphs 0056-0059.

Claims 25, 28, and 29

     Appellants' remarks are directed only at claim 25. The claim is directed to a
system comprising "interface means for providing an interface through which an end
user may input details for an auction, including feedback rules" (underlining added), and
"auction means for carrying out the auction…". The analysis of this claim is similar to
that of claim 23 with the exception that claim 25 is significantly broader. All that is
required to anticipate this claim are a means for providing an interface. The interface in

turn <u>may</u> be used to input details for an auction, the auction details including feedback

rules. Appellants' admit in their remarks that the prior art discloses means for providing

interfaces, systems and methods for conducting auctions, providing different feedback

to different bidders, and dynamically adjusting the feedback based on the progress of

the auction, but argue that the details input through the interfaces in the prior art are

different than the details input through the interface in the present claim.

Appellants admit that the prior art gives the user control over parameters of the

auction, but then again argue that the prior art appears to provide feedback rules that

are "hard-coded" or "hard-wired" into the system. Appellants' argue that the prior art is

distinguishable because the rules that are available for selection are predetermined

("hard-wired" or "hard-coded"), and that setting up new ones might require "individual

coding." The examiner again does not agree with this characterization for the reasons

stated above, but also does not understand why this would be distinguishing. The

appellants' argument appears to be contradicted by the origins of the rules disclosed in

the present application. Though not claimed in sufficient detail, the origins of the rules

are described in the specification as being predominantly pre-determined.

Predetermined, preprogrammed rules are provided for selection when setting up the

auction. They can be changed during the auction, but the only way the claimed rules

can be truly entered and "customized" by the user is through the use of a scripting

language claimed only in claim 33, i.e., "individual coding."

Claim 26

Appellants argue that the dynamic adjustment of feedback in the prior art is different than the dynamic customization of feedback in the present claims. Claim 26 depends from claim 25 and therefore merely further describes the input that may be entered through the interface. The concept of dynamic customization is extensively relied upon in the arguments but only appears in claims 26 and 27. It is even less evident in the present specification itself, appearing only on page 2 paragraph 0014 ("the auction program 111, when executed, may allow an end-user to dynamically customize the type of feedback…"). To the extent that its meaning can be understood from the description in the specification, the examiner believes it is disclosed in the prior art as noted above.

Claim 27

Claim 27 is argued separately however the claim depends from claim 26 and the argument is similar. The examiner's position is the same as noted with regard to claim 26.

Claim 30

Claim 30 depends from claim 25 and therefore merely further describes the input that may be entered through the interface provided by the interface means. Note here that appellants argue that allowing selection from a menu of preassembled feedback rules is not disclosed by the prior art. As discussed above, appellants have previously argued that the present claims are distinguishable from the prior art because the prior

art only describes selecting from predefined feedback rules. Examiner has considered "predetermined," "predefined," and "preassembled" to be synonyms.

Claim 31

Claim 31 depends from claim 30 and therefore merely further describes the input that may be entered through the interface provided by the interface means in claim 25. Appellants argue that the claim is distinguishable because the preassembled feedback rules can include a variable specified by the user. It is noted that a variable can include bidder's rank, or for that matter anything describing the auction or the bidder. This information is clearly encompassed within the auction details previously entered, as disclosed in the prior art.

Claims 32, 33, 34, 35, and 36

These claims are argued separately by appellants, however, claim 32 depends from claim 31 and claims 33-36 depend from claim 25. The arguments raised with regard to these claims merely repeat issues that have been previously addressed above with regard to the previous claims. Claim 34 describes following one feedback rule until an event occurs and then following another. This is the same as dynamic customization of timing of feedback. With regard to claim 35, modifying the feedback rule has been understood by the examiner as synonymous with changing the feedback rule. This was addressed extensively in the Grounds of Rejection with regard to that concept. The

graphic interface in claim 36 has been disclosed at length above and at least in the

figures of the prior art.

Rejection Under 35 U.S.C. §103(a)

<u>Claims 17-21</u>

Appellants' remarks are directed only at claim 17. Appellants argue that no

permissible combination of Abeshouse and Chambers would disclose all the elements

of claim 17 yet appellants do not offer any argument indicating that they consider the

combination of Abeshouse and Chambers to be impermissible. It is therefore

understood that appellants intend to argue that the combination does not include all of

the elements. Although Chambers includes many elements in common with Abeshouse

and the present application, the only element in Chambers relied upon by the examiner

in the rejection is "permitting an end user of an online auction to customize feedback of

the online auction by selecting a feedback rule." This has been interpreted as allowing

selection of feedback rules by an end user independently from other auction details.

Appellants argue that this feature is not disclosed in Abeshouse. Examiner agrees and

has looked to Chambers for that feature. Appellants admit that Chambers allows a user

to modify certain information provided to bidders. Information provided to bidders is

feedback. Appellants argue that Chambers does not disclose an interface allowing the

selection of specific rules from a group consisting of feedback timing, personalized

feedback, and feedback based on rank. Although examiner believes Chambers does

disclose these features (certainly personalized feedback could be any feedback

modified based on any characteristic), examiner notes that the above Grounds of

Rejection clearly state that the element provided by Chambers is "permitting an end

user of an online auction to customize feedback of the online auction by selecting a

feedback rule." One cannot show nonobviousness by attacking references individually

where the rejections are based on combinations of references. See *In re Keller*, 642

F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231

USPQ 375 (Fed. Cir. 1986).

Claim 13

Claim 13 depends from claim 11 but incorporates the feature of allowing the user

to change selection of feedback rules during the auction. Appellants direct their

argument solely at Abeshouse. Appellants argue that examiner has not alleged

anything in Chambers that would have disclosed or suggested this feature. Claim 13

was include in the rejection under 35 U.S.C. 103(a). This rejection only included one

feature present in Chambers and not present in Abeshouse, yet appellants direct their

argument concerning this rejection toward the feature's absence from Abeshouse,

ignoring the explanation of this claim based on the presence of the feature in

Chambers. Thus we can end with an agreement. The feature is not present in

Abeshouse.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Jeffrey A. Smith/

Supervisory Patent Examiner, Art Unit 3625

Jeffrey A. Smith
Supervisory Patent Examiner
Art Unit 3625

Conferees:

Vincent A. Millin /VM/
Chief Appeal Conference Specialist
TC 3600

/J. A. S./
Supervisory Patent Examiner, Art Unit 3625
Jeffrey A. Smith
Supervisory Patent Examiner
AU 3625

Adam L. Levine   /A. L./
Examiner, Art Unit 3625